

Order

Michigan Supreme Court
Lansing, Michigan

May 21, 2010

Marilyn Kelly,
Chief Justice

139794

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PAUL KACHUDAS,
Plaintiff-Appellee,

v

SC: 139794
COA: 281411
Genesee CC: 06-084859-NO

INVADERS SELF AUTO WASH, INC.,
Defendant-Appellant.

On April 15, 2010, the Court heard oral argument on the application for leave to appeal the September 1, 2009 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.302(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REINSTATE the Genesee Circuit Court's September 6, 2007 order granting summary disposition to the defendant. The Court of Appeals erred by reversing the circuit court's ruling on the basis that the plaintiff's claim sounded in ordinary negligence. The plaintiff, who was allegedly injured by slipping on the icy surface of the defendant's premises, claimed that he was injured by a condition of the land, and as such, the claim was one for premises liability, as the circuit court correctly recognized. *James v Alberts*, 464 Mich 12, 18-19 (2001). Although an injured person may pursue a claim in ordinary negligence for the overt acts of a premises owner on his or her premises, *Laier v Kitchen*, 266 Mich App 482 (2005), the plaintiff in this case is alleging injury by a condition of the land, and as such, his claim sounds exclusively in premises liability. In addition, the circuit court properly ruled that the alleged hazardous condition was open and obvious, because a reasonably prudent average user of ordinary intelligence spraying water outdoors in a temperature range of 11 to 24 degrees would anticipate the likelihood of freezing and the resulting danger therefrom. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 330 (2004); *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 478-479 (2008).

CAVANAGH, J. (*dissenting*).

I would affirm the Court of Appeals result. I agree with the order's conclusion that plaintiff's claim sounds in premises liability, and the Court of Appeals erred by reversing the circuit court's ruling on the basis that it sounds in ordinary negligence. See

James v Alberts, 464 Mich 12, 18-19 (2001), and *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-611 (1995). I would nonetheless affirm the Court of Appeals result because, on the facts of this case, summary disposition was improper. Plaintiff has raised a genuine issue of material fact regarding the open and obvious doctrine, and the issue should be submitted to a jury. See, generally, *Bertrand*, 449 Mich at 617-618.

KELLY, C.J., joins the statement of CAVANAGH, J.

HATHAWAY, J. (*dissenting*).

I respectfully dissent from the order of this Court which reverses the Court of Appeals and reinstates the Genesee County Circuit Court's order granting summary disposition to the defendant. I believe the trial court's grant of summary disposition was in error and that the Court of Appeals properly reversed that decision. Accordingly, I would affirm the Court of Appeals.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 21, 2010

Corbin R. Davis

Clerk